

**Appendix A**  
**Parking Agreement – City of San Marino and SMUSD**

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**SAN MARINO UNIFIED SCHOOL DISTRICT AGREEMENT  
FOR NON-EXCLUSIVE USE OF PARKING FACILITIES  
WITH THE CITY OF SAN MARINO**

THIS AGREEMENT ("Agreement") is dated as of *November 21*, 2019 ("Execution Date"), but effective as of August 26, 2016 ("Effective Date"), by and between the San Marino Unified School District, Los Angeles County (hereinafter referred to as the "DISTRICT"), and the City of San Marino, a municipal corporation (hereinafter referred to as the "CITY").

**RECITALS**

**WHEREAS**, DISTRICT is the owner of that certain real property located at 1700 Huntington Drive, San Marino, Los Angeles County, California 91108 (the "Property");

**WHEREAS**, the California State Legislature enacted Sections 10900 through 10914.5 of the California Code of Education ("Community Recreations Program Legislation") for purposes including "to authorize ... cities ... and school districts to organize, promote, and conduct programs of community recreation as will contribute to the attainment of general education and recreational objectives" for California children and adults ("Community Recreation Purposes") (CAL. EDUC. CODE §10900);

**WHEREAS**, CITY and DISTRICT are authorized and empowered by Section 10905 of the Community Recreations Program Legislation to cooperate with one another, enter into agreements with each other, and do "any and all things necessary or convenient to aid and cooperate in carrying out" the Community Recreation Purposes;

**WHEREAS**, DISTRICT is authorized and empowered by Section 10910 of the Community Recreations Program Legislation to grant the use of any building, grounds or equipment of the DISTRICT to any other public authority for Community Recreation Purposes, so long as such grant does not interfere with the use of such building, grounds or equipment for any other purpose of the public school system;

**WHEREAS**, pursuant to Section 10901.F of the Community Recreations Program Legislation, a "recreation center" includes "a place, structure, area, or other facility under the jurisdiction of a governing body of a public authority used for community recreation whether or not it may be used primarily for other purposes, playgrounds, ... swimming pools, gymnasiums, auditoriums, libraries, parks adjacent to school sites, recreational community gardens, rooms for arts and crafts, ... and meeting places";

**WHEREAS**, pursuant to that certain San Marino Unified School District Agreement for Use of Parking Facilities with the City of San Marino dated as of August 25, 2006 ("Original Parking Agreement"), by and between the CITY and the DISTRICT, since 2006, the CITY has used parking spaces on the Property (or a portion

thereof) as overflow parking for that certain library owned by the CITY, known as the San Marino City library and located at 1890 Huntington Drive, San Marino, California ("San Marino City Library");

**WHEREAS**, the parties hereto acknowledge and agree that the Original Parking Agreement expired by its terms on August 25, 2016 and is of no further force or effect except for the provisions thereof that expressly survived the expiration or termination of such Original Parking Agreement;

**WHEREAS**, the parties hereto acknowledge and agree that the terms and provisions of this Agreement are effective retroactively as of the Effective Date;

**WHEREAS**, the DISTRICT is constructing an athletics complex for the community to be known as the Barth Athletics Complex (the "Barth Athletics Complex") on or adjacent to the Property;

**WHEREAS**, the San Marino City Library and the Barth Athletics Complex both constitute community recreation centers within the spirit of the Community Recreations Programs Legislation; and

**WHEREAS**, the DISTRICT is willing to make available forty-eight (48) parking spaces located on the Property for non-exclusive use by the CITY for the San Marino City Library and other community recreation activities conducted on the CITY's adjacent real property, but only on the terms and conditions of this Agreement below.

**NOW, THEREFORE**, in consideration of the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the DISTRICT and the CITY, the DISTRICT and the CITY do hereby agree as follows:

**Section I. Economic and other General Terms of Agreement**

A. For the Term (as defined below) of this Agreement, the DISTRICT hereby leases to CITY, and CITY hereby leases from the DISTRICT, on a non-exclusive and shared basis, forty-eight (48) parking spaces located in the south parking lot on the Property (the "Subject Spaces"), as depicted on Exhibit A attached hereto.

B. Except as otherwise permitted in writing by the DISTRICT, at no point shall the Subject Spaces be used by the CITY or its invitees for other than employee and visitor parking for the San Marino City Library and/or the San Marino Center that is adjacent to the Property ("San Marino Center") (the "Permitted Uses"). The DISTRICT shall have no liability to the CITY if the Subject Spaces or any of them are not available for the San Marino City Library or San Marino Center or otherwise available to satisfy the CITY's parking needs at any time.

C. In consideration of the DISTRICT'S execution of this Agreement and the CITY's non-exclusive and shared use of the Subject Spaces during the Term, the CITY hereby agrees to pay to the DISTRICT rent ("Rent") as provided by this Section I.C. below.

(A) Within thirty (30) days after the Execution Date, the CITY shall pay to the DISTRICT the lump sum of Sixty-One Thousand Six Hundred and 00/100 Dollars (\$61,600.00). A portion of the aforesaid \$61,600 initial payment in the amount of Thirty Thousand Eight Hundred and 00/100 Dollars (\$30,800.00) represents back-rent for the City's use of the Subject Spaces for the period commencing on the Effective Date through the Execution Date, and the remaining Thirty Thousand Eight Hundred and 00/100 Dollars (\$30,800.00) portion of such initial payment represents Rent for the City's use of the Subject Spaces for the period commencing on the Execution Date through the day immediately preceding the first (1<sup>st</sup>) anniversary of the Execution Date. The 12-month period commencing on the Execution Date and on each anniversary of the Execution Date during the Term is referred to herein as a "Lease Year".

(B) On or before the first (1<sup>st</sup>) anniversary of the Execution Date and on each anniversary of the Execution Date thereafter throughout the remainder of the Term, the CITY shall pay to the DISTRICT as Rent an amount equal to the Rent paid for the prior Lease Year increased by two percent (2%) so that the Rent payable for each Lease Year will equal 102% of the total Rent payable for the immediately preceding Lease Year. For example, the Rent payable on or before the first (1<sup>st</sup>) anniversary of the Execution Date (*i.e.*, \_\_\_\_\_, 2020) will be Thirty-One Thousand Four Hundred Sixty-One and 00/100 Dollars (\$31,416.00), and the Rent payable on or before the second (2<sup>nd</sup>) anniversary of the Execution Date (*i.e.*, \_\_\_\_\_, 2021) will be Thirty-Two Thousand Forty-Four and 32/100 Dollars (\$32,044.32).

(C) In addition to the annual Rent payable by the CITY pursuant to this Section I.C. above, the CITY shall pay to the DISTRICT, within thirty (30) days after the Execution Date and on or before each anniversary of the Execution Date during the Term thereafter, the sum of Two Thousand and 00/100 Dollars (\$2,000.00). The annual payment of \$2,000 pursuant to this Section I.C.(C) is intended to compensate the DISTRICT for anticipated slurry seal repairs and needs over the Term of the Lease.

D. In further consideration of the non-exclusive right to use the

Subject Spaces together with the DISTRICT's use thereof throughout the Term, the CITY hereby agrees that the DISTRICT may use, subject to availability, the San Marino Center for school-sponsored events and PTA meetings. The DISTRICT shall reimburse to the CITY the actual cost of custodial and maintenance services provided in connection with the DISTRICT'S use of the San Marino Center.

- E. The District may from time to time repair, restore and/or improve the Property, including the Subject Spaces, as the District may deem reasonably necessary from time to time, in which event the District may restrict or prohibit access to the Subject Spaces during the performance of such repair, restoration or other improvement work. The DISTRICT shall cause all repair, restoration and improvement work to be performed as the DISTRICT reasonably determines and in its reasonable discretion. In no event shall the CITY have any approval or other rights over any work or improvements by the DISTRICT on parking facilities or the Property (or other portions of the DISTRICT's property).

## **Section II. Term of Agreement**

The term of this Agreement ("**Term**") shall commence on the Effective Date and expire on the tenth (10<sup>th</sup>) anniversary of the Execution Date, unless otherwise terminated as provided by this Agreement.

## **Section III. Use**

(a) Permitted Use. CITY may use the Subject Spaces on a non-exclusive basis with the DISTRICT only for the Permitted Uses in accordance with Section I.B. of this Agreement.

(b) Use Restrictions. CITY shall: (i) not permit any objectionable or unreasonable noises, vibrations, odors or fumes in or to emanate from the Subject Spaces, (ii) not commit or permit any waste, improper, immoral or offensive use of the Subject Spaces, any public or private nuisance or anything that disturbs the quiet enjoyment of the DISTRICT or any other licensees or lessees of the Subject Spaces, (iv) not permit any dump trucks, tank trucks, concrete trucks and construction vehicles to use or park in any of the Subject Spaces or the Property, and (iv) use the Subject Spaces throughout the Term only for the Permitted Uses, and for no other purpose, unless CITY has obtained the prior written consent of DISTRICT for each such other use.

(c) Rules and Regulations. Notwithstanding any other provisions of this Agreement, including, without limitation, Sections I.A. and III(a), CITY shall not use, occupy, suffer or permit the Subject Spaces or any part thereof to be used in any manner, or suffer or permit anything to be brought into or kept therein, which would, in DISTRICT's reasonable judgment, violate the Rules and Regulations attached hereto as Exhibit B (as the same may be reasonably amended and supplemented by DISTRICT from time to time, by written notice to CITY in accordance with this Section III(c), the "**Rules and Regulations**"). If the DISTRICT chooses to amend the Rules and Regulations, the CITY agrees to comply with such changes thereto so long as such changes are enforced in a non-discriminatory manner vis-à-vis the DISTRICT.

The restrictions imposed by this Section III(c), and the application thereof, shall not be limited or modified by the terms of any other provision of this Agreement.

#### **Section IV. Compliance with Laws**

(a) In General. CITY shall, in the use of the Subject Spaces, promptly comply, and cause all persons claiming by, through or under CITY promptly to comply, with all laws, ordinances, certificates of occupancy, orders, rules, regulations and requirements of all federal, state, municipal and other governmental bodies and appropriate departments, commissions, boards and officers thereof.

(b) Contest. CITY shall have the right to contest by appropriate legal proceedings or in such other lawful manner as CITY may deem suitable in the name of CITY or DISTRICT, or both, but without cost or expense to DISTRICT, the validity of any law, ordinance, certificate, order, rule, regulation or requirement of the nature in Section IV(a) referred to, and if by the terms of any such law, ordinance, certificate, order, rule, regulation or requirement, compliance therewith may legally be held in abeyance without the incurrence of any lien, charge or liability of any kind against the Subject Spaces, the Property or any interest of the DISTRICT therein and without subjecting the DISTRICT to any liability, civil or criminal, of whatsoever nature for failure so to comply therewith, CITY may postpone compliance therewith until the final determination of any contest; provided, however, that all such proceedings shall be prosecuted with all due diligence and dispatch. DISTRICT shall cooperate with CITY, without cost or expense to DISTRICT, in any such contest hereunder; provided, however, that prior to initiating or carrying on any such contest in the name of DISTRICT, (i) CITY shall so advise DISTRICT in writing not less than ten (10) days before initiating such contest if practical, and (ii) CITY shall indemnify, defend and hold DISTRICT harmless from and against any costs, fees or other liabilities accruing in any such proceeding(s) initiated by CITY and arising following the Effective Date, unless such costs, fees or liabilities result from the negligence or willful misconduct of DISTRICT.

(c) Hazardous Materials. CITY covenants and agrees that CITY shall not use, or permit any person or persons to use, the Subject Spaces, the Property or any part thereof for the use, manufacture, storage, discharge or transportation of hazardous materials or substances in violation of any Environmental Laws (as defined hereinbelow). As used herein "Environmental Laws" shall mean any federal, state or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority, now or hereafter in effect, which classify, regulate, list or define hazardous substances, materials, wastes, contaminants, pollutants and/or hazardous materials, and any other legal authority, regulations or policies relating to or implementing such statutes and regulations. CITY shall indemnify, defend and hold harmless DISTRICT from and against any and all claims, damages, liabilities and actions relating to the CITY's or any of its agents', employees', contractors', invitees', permittees', subtenants', licensees', representatives' or affiliates' storage, use or discharge of hazardous materials on the Subject Spaces or Property in violation of Environmental Laws; provided, however, the foregoing defense and indemnity provision shall not apply with respect to any hazardous materials or substances of any kind stored, used or discharged by DISTRICT or its agents, employees, contractors, invitees, permittees, tenants, subtenants, licensees, representatives or affiliates (excluding the CITY and its agents, employees, contractors, invitees, permittees,

tenants, subtenants, licensees, representatives, and/or affiliates). The provisions of this Section IV(c) shall survive the expiration or earlier termination of this Agreement.

## **Section V. As Is**

(a) As-Is. CITY accepts the Subject Spaces in their present condition notwithstanding the fact that there may be certain defects in the Subject Spaces, whether or not known to either party as of the Effective Date, and CITY hereby represents that it has performed all investigations that it deems necessary or appropriate with respect to the condition of the Subject Spaces or any improvements located thereon. CITY hereby accepts the Subject Spaces on an "AS-IS, WITH ALL FAULTS" basis and CITY is not relying on any representation or warranty of any kind whatsoever, express or implied, from DISTRICT or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Subject Spaces or the Property, including without limitation, the quality, nature, adequacy and physical condition and aspects of the Subject Spaces, the Property or any improvements located thereon, including, but not limited to, (i) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Subject Spaces, the Property and any improvements located thereon, (iii) the fitness or the suitability, value or adequacy, of the Subject Spaces or any improvements located thereon for any particular purpose, (iv) the zoning, entitlements or other legal status of the Subject Spaces, the Property or any improvements located thereon, and any public or private restrictions affecting use of the Subject Spaces, (v) the compliance of the Subject Spaces, the Property or any improvements located thereon with any applicable codes, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions or laws of DISTRICT, County, State, United States of America or any other local, state or federal governmental or quasi-governmental entity ("Applicable Laws"), including, without limitation, relevant provisions of the Americans with Disabilities Act, (vi) the presence of any underground storage tank or hazardous substances on, in, under or about the Subject Spaces, any improvements located thereon, the adjoining or neighboring property, or ground or other subsurface waters, (vii) the condition of title to the Subject Spaces, the Property or any improvements located thereon, and (viii) the operation of the Subject Spaces, the Property or any improvements located thereon (collectively, the "As-Is Conditions").

(b) Release. CITY HEREBY GENERALLY, FULLY AND IRREVOCABLY RELEASES DISTRICT, ITS BOARD, STAFF, AGENTS, EMPLOYEES, INDEPENDENT CONTRACTORS AND OTHER REPRESENTATIVES (COLLECTIVELY, THE "DISTRICT PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS THAT CITY MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST ANY OF THE DISTRICT PARTIES FOR AND FROM ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, ACTION OR CAUSE OF ACTION, WHETHER FORESEEN OR UNFORESEEN, KNOWN OR UNKNOWN, ARISING OUT OF OR RELATED TO THE PROPERTY OR THE SUBJECT SPACES (INCLUDING, WITHOUT LIMITATION, ANY PATENT, LATENT OR OTHER DEFECTS IN THE PROPERTY OR THE SUBJECT SPACES OR THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE SUBJECT SPACES AND THE AS-IS CONDITIONS).



WITH RESPECT TO THE FOREGOING RELEASES AND WAIVERS SET FORTH IN THIS SECTION, CITY EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

CITY HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND UNDERSTANDS THE SIGNIFICANCE OF THIS WAIVER OF SECTION 1542 RELATING TO UNKNOWN, UNSUSPECTED AND CONCEALED CLAIMS. BY ITS INITIALS BELOW, CITY ACKNOWLEDGES THAT CITY FULLY UNDERSTANDS, APPRECIATES AND ACCEPTS ALL OF THE TERMS OF THIS SECTION.

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CITY

#### **Section VI. Indemnification**

To the full extent permitted by law and by a court of competent jurisdiction, CITY shall defend, indemnify and hold harmless DISTRICT, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including without limitation, actual attorneys' fees, court costs, interest, defense costs, expert witness fees, and any other costs or expenses of any kind whatsoever without restriction or limitation incurred by DISTRICT and resulting from CITY's (or any of its agents', employees', contractors', invitees', permittees', subtenants', licensees', representatives' or affiliates') use of the Subject Spaces or access to or on the Property pursuant to this Agreement. All obligations and liabilities under this Section are to be paid by CITY as incurred by DISTRICT. This indemnity shall survive the expiration or termination of this Agreement.

Without affecting the rights of DISTRICT under any provision of this Section, CITY shall not be required to indemnify, defend and hold harmless DISTRICT as set forth above for liability attributable to the active gross negligence or willful misconduct of DISTRICT, provided such active gross negligence or willful misconduct is determined by agreement between the parties or the findings of a court of competent jurisdiction or referee, as applicable. This exception will apply only in instances where the DISTRICT is shown to have been actively and grossly negligent and not in instances where CITY is solely or partially at fault or in instances where DISTRICT's active gross negligence or willful misconduct accounts for only a percentage of the liability involved. In those instances, the obligation of CITY will be for that portion or percentage of liability not attributable to the active gross negligence or willful misconduct of DISTRICT as determined by written agreement between the parties or the findings of a court of competent jurisdiction or referee, as applicable.

## **Section VII. Independent Contractor Status**

CITY is, and shall at all times remain to DISTRICT, a wholly independent contractor. CITY shall have no power to incur any debt, obligation, or liability on behalf of DISTRICT or otherwise act on behalf of DISTRICT as an agent. Neither DISTRICT nor any of its agents shall have control over the conduct of CITY or any of CITY's employees or independent contractors. CITY shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of DISTRICT.

## **Section VIII. Insurance**

(a) CITY's Insurance. During the Term of this Agreement, the CITY shall maintain, at its own expense, (1) comprehensive general liability insurance in the amount of at least two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in the aggregate for bodily and personal injury, (2) a combined single limit of at least one million (\$1,000,000) per occurrence for property damage and (3) workers' compensation insurance in the amount required by law. The comprehensive general liability insurance provided by the CITY shall be endorsed to name the DISTRICT, its Board, officers, and employees as additional insureds on the applicable policy or policies.

(b) Required Provisions. All insurance policies shall also be endorsed to provide that the insurance coverage shall not be canceled, reduced, or otherwise modified without the insurance carrier giving the DISTRICT thirty (30) days prior written notice thereof. The CITY agrees to provide certificates of insurance of adequate evidence of coverage, including copies of the required endorsements.

The CITY is a member of the California Joint Powers Insurance Authority, and the DISTRICT agrees that the coverage afforded the CITY by this entity satisfies the requirements of this Section.

(c) Failure to Procure Insurance. If CITY fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from DISTRICT, in addition to the other rights and remedies provided hereunder, DISTRICT may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by DISTRICT shall be repaid by CITY, with interest thereon at the Applicable Rate, to DISTRICT within five (5) business days after CITY's receipt of written demand therefor.

(d) Notification of Incidents, Claims or Suits. CITY shall notify DISTRICT of any accident or incident on or about the Subject Spaces or Property which involves injury or property damage over Five Thousand Dollars (\$5,000.00) in the aggregate and pursuant to which a claim against CITY and/or DISTRICT is made or threatened. Such notification shall be made in writing within 72 hours after CITY first becomes aware of the claim or threatened claim.

## **Section IX. No Assignment**

The CITY may not assign or transfer, in any manner, its rights and obligations under this Agreement except that the CITY may allow its invitees and permittees to use the Subject Spaces for the permitted use. Any such attempted assignment or transfer shall result in the immediate and automatic termination of this Agreement.

## **Section X. Alterations and Maintenance**

(a) Alterations by the CITY. The CITY may not alter the Subject Spaces or the Property without DISTRICT's prior written consent (which consent may be given or withheld in the DISTRICT's sole and absolute discretion). Any such approved alterations, additions or improvements shall be at the CITY's sole cost and expense and shall become the property of the DISTRICT and shall be surrendered upon the termination or expiration of this Agreement, except that DISTRICT may, by written notice given to CITY at least thirty (30) days prior to the end of the Term, require CITY to remove all or certain designated fixtures at the CITY's sole cost and expense.

(b) DISTRICT Maintenance. Notwithstanding anything to the contrary contained in this Agreement, the DISTRICT may at any time upon thirty (30) days' prior written notice, or a shorter period if additional damage may result, reasonably repair and maintain the Subject Spaces.

## **Section XI. Default; Remedies**

(a) Defaults by CITY. The occurrence of any of the following shall constitute a default under this Agreement by CITY (each, a "Default"):

- i. Any failure by CITY to pay any installment of Rent or any other amounts due and payable by the CITY hereunder when due, if the failure continues for ten (10) days after notice of default has been given to CITY;
- ii. Any failure by CITY to observe and perform any other provisions of this Agreement to be observed and performed by CITY, when such failure is curable and continues uncured for thirty (30) days after notice by DISTRICT to CITY; provided that, if the nature of the default cannot be reasonably cured within thirty (30) days, CITY shall not be deemed in default if it shall commence curing the default within such thirty (30) day period and diligently prosecutes same to completion;
- iii. The abandonment or vacation of the Subject Spaces and/or the cessation of business by CITY at the Subject Spaces; and
- iv. A transfer or attempted assignment or transfer in violation of Section IX.

The notices required under this Section XI(a) are the only notices required to be given by DISTRICT to CITY in the event of CITY's Default and are not in addition to any statutory notices otherwise required by the unlawful detainer statutes of California.

(b) Termination of Agreement and Remedies. In the event of any Default by CITY, in addition to any and all other rights and remedies available to DISTRICT at law or in equity, DISTRICT shall have the right to immediately terminate this Agreement and all rights of CITY hereunder by giving written notice to CITY of such election by DISTRICT, whereupon the DISTRICT shall be entitled to retain all Rent and other amounts paid to the DISTRICT pursuant to this Agreement as of the date of such termination and to bring a claim against CITY for any Rent or other amounts accrued through the date of the termination and not yet paid.

(c) Default Interest. If the CITY fails to make any payment due to the DISTRICT hereunder when due and payable (including, without limitation, Rent), then the amount due shall bear and accrue interest from the date that such payment became due and payable until it is paid at the rate of fifteen percent (15%) per annum, compounded monthly (the "Applicable Rate").

## **Section XII. Surrender of Subject Spaces**

Except as otherwise provided by Section X(a) above, CITY agrees that on expiration or termination of the Term, any improvements located on the Property shall become the property of DISTRICT, free from any liens or claims whatsoever, without any further compensation therefor from DISTRICT to CITY or any other person.

On expiration or termination of the Term, CITY shall surrender the Subject Spaces to DISTRICT, in good order, condition, and repair, reasonable wear and tear and obsolescence excepted.

## **Section XIII. Intentionally Omitted**

## **Section XIV. Estoppel Certificates**

Within fifteen (15) days after request by either party, the other party will execute and deliver an estoppel certificate in form reasonably satisfactory to the requesting party or its designees which will certify that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and stating whether, to the best knowledge of the signer of such certificate, the other party is in default in performance of any covenant, agreement or condition contained in this Agreement and, if so, specifying each such default of which the signer may have knowledge. Any such statement delivered pursuant to this Section XIV may be relied upon by any prospective purchaser of the interest of DISTRICT or any mortgagee or assignee thereof.

## **Section XV. Casualty**

(a) Reconstruction by DISTRICT. If, during the Term, the Subject Spaces are totally or partially destroyed by any casualty, the DISTRICT (in the DISTRICT's sole and absolute discretion) may elect by written notice to the CITY ("Casualty Notice") delivered within thirty (30) days after the date of such casualty to: (x) restore the Subject Spaces to

substantially the same condition as they were in immediately before destruction and as soon as reasonably possible or (y) not restore the Subject Spaces. If the DISTRICT elects to restore the Subject Spaces pursuant to Section XV.(a)(x), the costs and expenses incurred to reconstruct and/or restore the Subject Spaces, to the extent not covered by insurance, shall be paid by the DISTRICT. If the DISTRICT elects to restore the Subject Spaces pursuant to Section XV.(a)(x), but has not completed such restoration within two hundred seventy (270) days after delivery of the Casualty Notice, the CITY may terminate the Agreement by written notice to the DISTRICT delivered within thirty (30) days thereafter. If the DISTRICT elects to not restore the Subject Spaces pursuant to Section XV.(a)(y), either the CITY or DISTRICT may terminate the Agreement by written notice delivered to the other party within thirty (30) days after delivery of the Casualty Notice. All insurance proceeds paid or payable in connection with any casualty shall be the sole property of the DISTRICT; provided that, the DISTRICT will apply such proceeds to the restoration of the Subject Spaces if and to the extent that the DISTRICT elects to restore such Subject Spaces.

(b) Abatement or Reduction of Rent if DISTRICT Elects to Restore. If DISTRICT elects to repair the damage to all or part of the Subject Spaces pursuant to Section XV.(a)(x), the Rent payable by CITY hereunder shall be proportionately reduced based on the number of Subject Spaces which are thereby rendered unusable from the date of such casualty until five (5) days after completion by DISTRICT of the repairs to the Subject Spaces (or the part thereof rendered unusable) or until CITY again uses the Subject Spaces (or the part thereof rendered unusable), whichever first occurs.

(c) Inapplicability of Civil Code Sections. The provisions of California Civil Code §§1932(2) and 1933(4), and any successor statutes, are inapplicable with respect to any destruction of any part of the Subject Spaces or Property.

## **Section XVI. Condemnation**

(a) Total Taking. If all Subject Spaces should be taken by any public or quasi-public authority under the power or threat of eminent domain, then, in such event, on the earlier of the date title to the Subject Spaces vests in such public or quasi-public authority, or the date on which the public or quasi-public agency takes possession of the Subject Spaces, this Agreement shall terminate and the parties shall be relieved of further obligations under this Agreement except those obligations and liabilities that arose before the effective date of termination, but termination of this Agreement shall not affect DISTRICT's and CITY's rights to seek from the condemning authority any compensation or damages for, on the account of, or arising out of, such taking.

(b) Partial Taking. If a taking shall occur that results in the permanent loss of more than fifty percent (50%) of the parking spaces on the Property, either party may elect to terminate this Agreement by written notice delivered to the other party within thirty (30) days after the commencement of such taking process. If neither party elects to terminate this Agreement within such thirty (30) day period, then (i) unless the DISTRICT agrees otherwise in its sole and absolute discretion, the number of Subject Spaces will be reduced proportionately by the percentage of parking spaces taken within the Project (e.g., if 25% of the total parking spaces at the Property are taken, then the Subject Spaces will be reduced

from 48 to 36 parking spaces) and CITY will be permitted to continue to use such reduced number of Subject Spaces on a non-exclusive basis with the DISTRICT on the terms of this Agreement, (ii) if the number of Subject Spaces are reduced pursuant to clause (i) above, Rent payable by the CITY hereunder shall be proportionately adjusted and reduced by such percentage reduction in Subject Spaces, and (iii) DISTRICT shall retain the right to seek from the condemning authority, and shall be entitled to retain, any compensation or damages for, on the account of, or arising out of, such taking. If a taking shall occur that results in the permanent loss of fifty percent (50%) or less of the total parking spaces within the Property, then this Agreement shall not terminate but at the DISTRICT's election by notice to CITY in its sole and absolute discretion, the Subject Spaces and Rent payable by the CITY hereunder shall be proportionately reduced by the percentage reduction in parking spaces at the Property resulting from such taking as described in clauses (i) and (ii) above, and the DISTRICT shall be entitled to receive the entire award made in connection with any such partial taking.

(c) Temporary Taking. Notwithstanding anything to the contrary contained in this Section XVI, in the event of a temporary taking of all or any portion of the Subject Spaces for a period of one hundred eighty (180) days or less, then this Agreement shall not terminate but the Rent payable by the CITY hereunder shall be abated for the period of such taking in proportion to the ratio that the amount of Subject Spaces taken bears to the total amount of Subject Spaces. The DISTRICT shall be entitled to receive the entire award made in connection with any such temporary taking. In the event of a temporary taking of more than fifty percent (50%) of the Subject Spaces for a period of more than one hundred eighty (180) days, either party may elect to terminate this Agreement by written notice delivered to the other party within thirty (30) days after the commencement of such temporary taking process. If neither party elects to terminate this Agreement within such thirty (30) day period, (i) the CITY's right to continue to use the remaining Subject Spaces on a non-exclusive basis with the DISTRICT and otherwise on the terms of this Agreement shall continue, (ii) Rent payable by the CITY hereunder shall be proportionately abated, adjusted or reduced, and (iii) DISTRICT shall retain the right to seek from the condemning authority, and shall be entitled to retain, any compensation or damages for, on the account of, or arising out of, such temporary taking. In the event of a temporary taking of fifty percent (50%) or less of the Subject Spaces for a period of more than one hundred eighty (180) days, then this Agreement shall not terminate but the Rent payable by the CITY hereunder shall be abated for the period of such taking in proportion to the ratio that the amount of Subject Spaces taken bears to the total amount of Subject Spaces. The DISTRICT shall be entitled to receive the entire award made in connection with any such temporary taking.

(d) Inapplicability of Code Section. The provisions of California Code of Civil Procedure §1265.130, and any successor statute, are inapplicable with respect to any condemnation or taking of all or any portion of the Subject Spaces.

## **Section XVII. WAIVER OF JURY TRIAL**

CITY AND DISTRICT EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY

JURY WITH RESPECT TO ANY CONTROVERSY OR CLAIM, WHETHER ARISING IN TORT OR CONTRACT OR BY STATUTE OR LAW, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF) OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION HERewith ("**DISPUTES**"). EACH PARTY ACKNOWLEDGES AND AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR CITY'S AND DISTRICT'S ENTERING INTO THIS AGREEMENT AND THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THIS WAIVER. CITY AND DISTRICT ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION XVII IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.

**Section XVIII. CONSENT TO JUDICIAL REFERENCE**

If and to the extent that Section XVII immediately above is determined by a court of competent jurisdiction to be unenforceable, each of the parties to this Agreement hereby consents and agrees that (a) any and all Disputes shall be heard by a referee in accordance with the general reference provisions of California Code of Civil Procedure Section 638, (b) such referee shall hear and determine all of the issues in any such Dispute (whether of fact or of law) and shall report a statement of decision, provided that, at the mutual agreement of the parties, any such issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (c) pursuant to California Code of Civil Procedure Section 640(a), judgment may be entered upon the decision of such referee in the same manner as if the Dispute had been tried directly by a court. The parties shall use their respective best efforts to agree upon and select such referee, provided that such referee shall be a retired California state or federal judge. Each party hereto acknowledges that this consent is a material inducement to enter into this Agreement and all other agreements and instruments provided for herein, and that each will continue to rely on this consent in their related future dealings. The parties shall share the cost of the referee and reference proceedings equally; provided that, the referee may award attorneys' fees and reimbursement of the referee and referenced proceeding fees and costs to the prevailing party, whereupon all referee and reference proceeding fees and charges will be payable by the non-prevailing party (as so determined by the referee). Each party hereto further warrants and represents that it has reviewed this consent with legal counsel of its own choosing, or has had an opportunity to do so, and that it knowingly and voluntarily gives this consent having had the opportunity to consult with legal counsel. This consent is irrevocable, meaning that it may not be modified either orally or in writing, and this consent shall apply to any subsequent amendments, renewals, supplements, or modifications to this Agreement or any other agreement or document entered into between the parties in connection with this Agreement. In the event of litigation, this Agreement may be filed as evidence of either or both parties' consent to have any and all Disputes heard and determined by a referee under California Code of Civil Procedure Section 638.

**Section XIX. Attorney's Fees**

In the event that legal action is necessary to enforce the provisions of this Agreement, the parties agree that the prevailing party shall be entitled to recover attorney's fees and expert witness fees and costs from the opposing party in any amount determined by the court or referee, as applicable, to be reasonable.

FOR PURPOSES OF THIS AGREEMENT, IF EITHER PARTY MAKES A SETTLEMENT OFFER TO THE OTHER PARTY IN CONNECTION WITH A DISPUTE, THEN THE TERM "PREVAILING PARTY" SHALL BE DEEMED TO INCLUDE AND CONSTITUTE A PREVAILING PARTY AS DEFINED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 998, WHETHER OR NOT SUCH SETTLEMENT OFFER WAS MADE UNDER AND/OR PURSUANT TO SAID SECTION 998 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND THE PREVAILING PARTY IN SUCH EVENT WILL BE PERMITTED TO RECOVER ALL OF ITS ATTORNEYS' FEES, COSTS AND EXPENSES, AND NOT ONLY ITS LITIGATION COSTS OR ITS ATTORNEYS' FEES, COSTS AND EXPENSES INCURRED FROM AND AFTER THE DATE OF THE SETTLEMENT OFFER. The provisions of this Section XIX shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

**Section XX. Real Estate Brokers**

CITY and DISTRICT each represent that it has not had dealings with any real estate broker, finder, or other similar person with respect to this Agreement in any manner. CITY and DISTRICT each shall indemnify the other from all claims that may be asserted against the other by any broker, finder, or other similar person with whom it has purportedly dealt.

**Section XXI. Authority**

Each individual executing this Agreement on behalf of CITY covenants, warrants, and represents that (a) he or she is duly authorized to execute and deliver this Agreement on behalf of CITY; (b) this Agreement is binding on CITY; (c) CITY is a duly organized and legally existing municipal corporation in good standing in the state of California; and (d) the execution and delivery of this Agreement by CITY shall not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement, or other contract or instrument to which CITY is a party or by which CITY may be bound.

**Section XXII. Nondiscrimination**

The DISTRICT shall not discriminate on the basis of race, color, sex, age, religion, national origin, or any other basis prohibited by law in making available its facilities to CITY pursuant to this Agreement. CITY shall not discriminate on the basis of race, color, sex, age, religion, national origin, or any other basis prohibited by law in connection with its use of the DISTRICT's facilities or the Property or operating its recreation programs at or adjacent to DISTRICT Property.



**Section XXIII. Entire Agreement**

This Agreement supersedes any and all other agreements (including, without limitation, the Original Parking Agreement), either oral or in writing, between the parties with respect to the subject matter herein and contains the entire agreement. Any modification of this Agreement will be effective only if it is in a writing signed by the CITY and the DISTRICT.

**Section XXIV. Applicable Law**

This Agreement shall be governed by the laws of the State of California.

**Section XXV. Notice**

Any notice which is required to be given by any provision of this Agreement will be in writing and will be deemed duly given: (i) when delivered by hand if delivered prior to 3:00 p.m. Pacific Time, otherwise on the next business day, (ii) one (1) business day after delivery to a recognized overnight courier service providing dated evidence of delivery, (iii) three (3) business days after being sent by U.S. certified mail, with a return receipt requested, or (iv) when sent by email, provided the email is sent prior to 3:00 p.m. Pacific Time on a business day, otherwise on the next business day. Each notice shall be addressed as follows unless a party notifies the other party in writing of a different address for receipt of notice:

If to the DISTRICT:

San Marino Unified School District  
1665 West Drive  
San Marino, CA 91108  
Attention: Dr. Jeff Wilson  
Email: jwilson@smusd.us  
Phone: (626) 299-7000

If to the CITY:

City of San Marino  
2200 Huntington  
San Marino, CA 91108  
Attention: City Manager Dr. Marcella Marlowe  
Email: mmarlowe@cityofsanmarino.org  
Phone: (626) 300-0700

**Section XXVI. No Third Party Rights**

Nothing herein is intended to nor shall be construed to create any rights of any kind whatsoever in third persons or entities not parties to this Agreement.

**Section XXVII. Counterpart Execution**

This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same agreement.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

**CITY:**

**CITY OF SAN MARINO,**  
a municipal corporation

By: Marcella Marlowe  
Name: Marcella Marlowe  
Title: City Manager

**DISTRICT:**

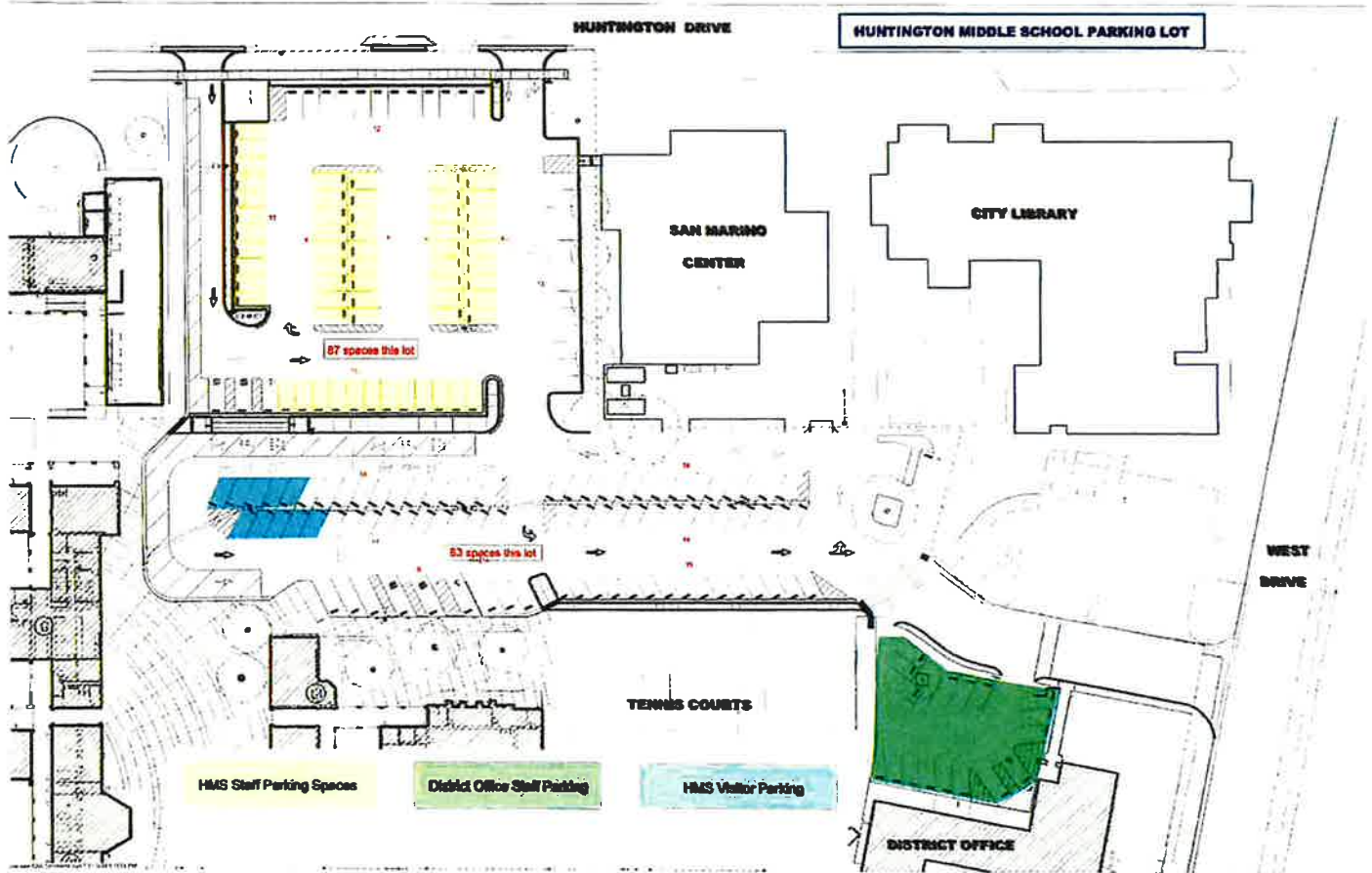
**SAN MARINO UNIFIED SCHOOL**  
**DISTRICT, LOS ANGELES COUNTY**

By: Jeffrey D. Wilson  
Name: Jeffrey D. Wilson  
Title: Superintendent

**EXHIBIT A**

**DEPICTION OF SUBJECT SPACES**

**EXHIBIT A - DEPICTION OF SUBJECT SPACES**



## EXHIBIT B

### RULES AND REGULATIONS AS OF THE EFFECTIVE DATE

The following rules and regulations shall apply, where applicable, to the Subject Spaces and other portions of the Property, and are subject to change and addition from time to time by DISTRICT in accordance with this Agreement. In the event of a direct conflict between the rules and regulations and the remainder of the terms of the Agreement to which these rules and regulations are attached, the terms and provisions of the Agreement shall control. Capitalized terms used herein have the same meanings as defined in the Agreement.

1. The sidewalks and public portions of the Property, such as entrances, passages, courts, stairways, or corridors shall not be obstructed or encumbered by any visitor or used for any purpose other than ingress and egress to and from the Subject Spaces. No rubbish, litter, trash, or material shall be placed, emptied, or thrown in those areas. At no time shall CITY permit CITY's employees or invitees to loiter in common areas or elsewhere about the Subject Spaces, the Property or the DISTRICT's adjacent real property.

2. No signs, advertisements or notices shall be exhibited, inscribed, painted or affixed to the Subject Spaces or Property, except those of such color, size, style and in such places as are first approved in writing by DISTRICT. In the event of the violation of the foregoing by CITY or its invitees or other representatives, DISTRICT may remove same without any notice or liability, and may charge the expense incurred by such removal to the CITY.

3. DISTRICT shall have the right to approve the weight, size, or location of heavy equipment or articles brought on and about the Subject Spaces or Property, which approval shall not be unreasonably withheld. Damage to the Subject Spaces or Property by the maintenance, operation, existence or removal of CITY's property shall be repaired at CITY's sole expense.

4. CITY and its invitees and representatives shall not: (a) make or permit any improper, objectionable or unpleasant noises or odors on the Subject Spaces or Property, or otherwise interfere in any way with persons on the Property; (b) solicit business or distribute or cause to be distributed, in any portion of the Property, handbills, promotional materials or other advertising; or (c) conduct or permit other activities by any of CITY or the agents, employees, invitees or licensees of CITY that might, in DISTRICT's reasonable opinion, constitute a nuisance.

5. No animals, except those assisting handicapped persons, shall be brought onto the Property or kept in or about the Subject Spaces.

6. No flammable, explosive or dangerous fluids or substances shall be brought on, used or kept by CITY on the Subject Spaces or on the Property, except for those substances as are typically found in similar premises used for parking and are being used by CITY in a safe manner and in accordance with all Applicable Laws. CITY shall not use, store, install, spill, remove, release or dispose of within or about the Subject Spaces or any other portion of the Property, any solid, liquid or gaseous

material now or subsequently considered toxic or hazardous by any applicable environmental law which may now or later be in effect. CITY shall comply with all Applicable Laws pertaining to and governing the use of these materials by CITY and shall remain solely liable for the costs of abatement and removal.

7. CITY shall not use or occupy the Subject Spaces in any manner or for any purpose which might injure the reputation or impair the present or future value of the Subject Spaces, the Property or the DISTRICT. CITY shall not use, or permit any part of the Subject Spaces to be used for lodging, sleeping or for any illegal purpose.

8. CITY shall not take any action which would violate DISTRICT's labor contracts or which would cause a work stoppage, picketing, labor disruption or dispute or interfere with DISTRICT or with the rights and privileges of any person lawfully on the Property ("**Labor Disruption**"). CITY shall take the actions necessary to resolve the Labor Disruption, and shall have pickets removed and, at the request of DISTRICT, immediately terminate any work in the Subject Spaces, on the Property, or at the San Marino City Library that gave rise to the Labor Disruption, until DISTRICT gives its written consent for the work to resume. CITY shall have no claim for damages against DISTRICT as a result of the above actions.

9. DISTRICT may from time to time adopt systems and procedures for the security and safety of the Property, the Subject Spaces and DISTRICT's visitors' entry and use of the Property. CITY, its agents, employees, guests and invitees shall comply with DISTRICT's systems and procedures.

10. Neither CITY nor its agents, employees, contractors, guests or invitees shall smoke or permit smoking on the Subject Spaces or the Property, unless a portion the Property has been declared a designated smoking area by DISTRICT. DISTRICT shall have the right to designate the entire Property (including the Subject Spaces) as non-smoking.

11. Neither CITY nor its agents, employees, guests or invitees shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with any person on the Property or neighboring buildings or premises.